

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Susan Enid Bragg,
Debtor.

Wayne Cobb,
Plaintiff,
v.

John Herschell Bragg,
Defendant.

ORDER

Case No. 96-77619

Adversary No. 99-80879

FILED
at _____ O'clock _____
[JUL 24 2000]
BRENDA K. ARGO, CLERK
United States Bankruptcy Court
Columbia, South Carolina

JUDGMENT ON ORDER ENTERED JULY 24, 2000

This Court has exclusive jurisdiction to determine what interest in the debtor's property was sold.

This Court finds that the Order entered by the Family Court is contrary to the Order of this Court authorizing the trustee's sale of property to Cobb and constitutes an invalid collateral attack on this Court's Order of August 28, 1998, for the sale of property.

This Court further finds that the debtor owned a one-half interest in the marital home at the time she filed her petition and that interest was property of the estate; that Bragg's special equity and ownership interest did not attach to said property or was perfected post-petition; that pursuant to § 544, the trustee took the debtor's interest in the marital home free and clear of Bragg's special equity and ownership interest; and that Cobb purchased an undivided one-half interest in the marital home, not merely an equitable interest.

This Court also finds that the issuance of a deed by the trustee for said property is appropriate, and the trustee is hereby authorized to issue said deed.

Finally, this Court permanently enjoins Bragg's enforcement of the Order of the Family Court, insofar as that Order determines that the debtor's special equity and ownership interest in the marital home was 35%, that Cobb purchased only the debtor's equity in said home, and orders Cobb to deed his interest in said property to Bragg.

Wm. Thurmond Bishop
Wm. Thurmond Bishop
Judge

Columbia, South Carolina

This 24th day of July, 2000.

ENTERED

JUL 24 2000

C.H.B.

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JUL 24 2000

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

CONNIE H. BROOKS

Deputy Clerk

Pl's atty - Fort
Def's atty -
Cooper

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

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JUL 12 4 2000

O R D E R

BRENDA WARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (2)

Case No. 96-77619

Adversary No. 99-80379

IN RE:)
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Susan Enid Bragg,)
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Debtor.)
)
)
Wayne Cobb,)
)
Plaintiff,)
)
v.)
)
John Herschell Bragg,)
)
Defendant.)

ENTERED

JUL 12 4 2000

C.H.B.

This matter is before the Court on a complaint seeking declaratory and injunctive relief. The facts underlying this case are not in dispute.

FINDINGS OF FACTS

Plaintiff Wayne Cobb (Cobb) is the father of the debtor, Susan Enid Bragg (debtor). Defendant John Herschell Bragg (Bragg) is the former spouse of the debtor. The debtor's petition was filed October 21, 1996, and L. Winston Lee was appointed trustee in this case. On November 25, 1996, based on schedules and statements on file in this case at that time, the trustee filed his Report of No Distribution, and on January 29, 1997, this case was closed.

On January 7, 1998, Bragg filed an action for divorce against the debtor in the Spartanburg County Family Court. On

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March 25, 1998, upon motion of the United States Trustee, this case was reopened in order to administer certain assets, including the marital home of the debtor and Bragg which was not originally scheduled by the debtor. L. Winston Lee was reappointed trustee in the case.

On July 13, 1998, the trustee filed his Notice of Intent to Sell the estate's interest in the marital home to Wayne Cobb. The marital home was titled in the names of John H. Bragg and Susan E. Bragg by virtue of a deed conveying the property to them on January 31, 1991. At all times relevant to this inquiry, John Bragg was represented by bankruptcy counsel.

On August 28, 1998, this Court entered its Order approving the sale of the estate's interest in the former marital residence to Cobb. There were no objections to said sale. Cobb paid the sum of \$35,000.00 to the trustee. The trustee, however, did not execute a deed in favor of Cobb. On December 9, 1998, the trustee filed his Final Report and Account, and on May 26, 1999, the case was again closed.

On July 2, 1999, the Honorable Georgia V. Anderson of the Spartanburg County Family Court issued a Decree of Divorce, which decree also dealt with issues of equitable division of marital property. The Family Court Order provided, *inter alia*, that the debtor's special equity and ownership interest in the marital home was 35%; that Cobb had purchased only the debtor's equity in said home; ordered Cobb to deed his interest in said property to Bragg, and ordered Bragg to pay the debtor \$14,002.00 for said

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interest, less \$6,000.00 of Bragg's attorney fees.

CONCLUSIONS OF LAW

This Court must first determine what interest in property the trustee sold to Wayne Cobb, and what effect the bankruptcy and that sale have on the equitable marital claim of John Bragg.

I.

It is well established that § 541 of the Bankruptcy Code establishes an "estate" which consists of all of the debtor's legal and equitable interests in property. 11 U.S.C. § 541(a)(1). Section 363 provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The estate is separate from the debtor and may include interests that are not readily transferable by the debtor. See *Vineyard v. McKenzie (In re Quality Holstein Leasing)*, 752 F.2d 1009, 1014 (5th Cir. 1985).

According to 28 U.S.C. § 1334(a), "the [federal] district courts shall have original and exclusive jurisdiction of all cases under Title 11." *Id.* Pursuant to 28 U.S.C. § 157(a), the United States District Court for the District of South Carolina has referred all cases under Title 11 to the United States Bankruptcy Court for the District of South Carolina in Local Civil Rule 83.X.01. Sales of property of the estate are core proceedings over which the district court and, derivatively, the bankruptcy court, have exclusive jurisdiction. See *Horwitz v. Zywczyński (In re Zywczyński)*, 210 B.R. 924, 928, 933 (Bankr.

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W.D.N.Y. 1997) (recognizing the bankruptcy court's exclusive jurisdiction over property of the estate); *Allnutt v. Associates Leasing, Inc. (In re Allnutt)*, 220 B.R. 871, 883, 886 (Bankr. D. Md. 1998) (enjoining a collateral attack on the bankruptcy court's sale of property based on the bankruptcy court's exclusive jurisdiction). See also *Brown v. Dellinger (In re Brown)*, 734 F.2d 119 (2d Cir. 1984) (holding that the bankruptcy court has exclusive jurisdiction to resolve competing claims to property of the estate). "'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. . . .'" *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (1984)).

The power of the bankruptcy court to order the sale of property free and clear of adverse interests and claims is so essential to the administration of bankruptcy estates that such power is beyond question. See *In re Allnutt*, 220 B.R. at 884. See also *In re Zywczyński*, 210 B.R. at 927-28. In *Celotex Corp. v. Edwards*, the court noted that "[i]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders . . . are to be respected." *Id.* (citations omitted). This Court finds that it is the bankruptcy court, which approved the sale in the first place, that has the exclusive jurisdiction to determine what

interest in the debtor's property was sold, and has, theoretically, the power to set aside that sale or afford other relief in proper circumstances.

The bankruptcy system's need for order and finality is such that if a court having jurisdiction enters an order, such order must be obeyed until reversed, even if proper grounds exist to challenge the order. See *Spartan Mills v. Bank of America Illinois*, 112 F.3d 1251, 1255 (4th Cir. 1997). This Court will not allow a creditor to perpetrate a collateral attack in another court on a duly authorized bankruptcy sale. To rule otherwise would allow any and all sales by bankruptcy trustees to be beset by subsequent "equitable" and other claims, even claims by debtors themselves, and would open the door to endless and spurious litigation. See generally *In re Allnutt*, 220 B.R. at 871. See also, *Spartan Mills v. Bank of America Illinois*, 112 F.3d at 1257-58 (4th Cir. 1997).

In re Allnutt involved a thinly disguised attempt by a tax-protester-debtor, through his wife, to regain control of property sold by his bankruptcy trustee to satisfy the claims of creditors, by suing the purchasers of that property in state court. *In re Allnutt*, 220 B.R. at 871. *In re Allnutt*, while an extreme case, represents the kind of abusive and spurious litigation that can result if collateral attacks on bankruptcy sales are tolerated.

In *Spartan Mills v. Bank of America Illinois*, 112 F.3d at 1251, the Fourth Circuit rejected a collateral suit attacking the

validity of a sale approved by a Florida bankruptcy court. The court noted that the record of the bankruptcy proceeding provided ample evidence that Spartan Mills made a considered decision not to challenge the actions of the bankruptcy court, but to try to litigate its claim at another time and in another court. *Id.* "Respect for the orderly process of law demands that the Florida bankruptcy court's final, unappealable order be given effect," *id.* at 1258, despite procedural irregularities.

This Court has exclusive jurisdiction over the property of a debtor, and provides a uniform scheme for the administration of that debtor's assets and the adjudication of all claims against the debtor and her property.

II.

The debtor's petition was filed on October 21, 1996, before marital litigation was commenced. At the time of the petition, therefore, the debtor owned a one-half interest in the marital home as a joint tenant. South Carolina Code Annotated § 20-7-471 creates a "vested special equity and ownership right" in marital property. S.C. Code Ann. § 20-7-471 (Law. Co-op. 1976). That special equity and ownership right attaches when marital litigation is *filed*, but does not take priority over a judgment lien which is filed before the commencement of marital litigation. See *Prosser v. Pee Dee State Bank*, 367 S.E.2d 698 (S.C. 1988). Any special equity and ownership interest claimed by Bragg was not perfected until January 7, 1998, the date on which marital litigation was commenced. The re-opening of a case

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restores it to the status and posture it was in on the date of filing.

Pursuant to § 544 of the Bankruptcy Code, the trustee has the status of a judgment lien creditor whose lien was filed as of the petition date. See 11 U.S.C. § 544(a)(1). Therefore, the trustee's interest in the debtor's property as a hypothetical perfected judicial lien creditor takes priority over Bragg's special equity and ownership interest, which did not attach, if at all, until after the bankruptcy petition was filed. See *Crestar Bank v. Neal (In re Kitchin Equipment Co. of Va., Inc.)*, 960 F.2d 1242, 1245 (4th Cir. 1992), (citing *Rock Hill Nat'l Bank v. York Chem. Indus., Inc. (In re York Chem. Indus., Inc.)*, 30 B.R. 583,585 (Bankr. D.S.C. 1983)). "The trustee's powers [under § 544] serve essentially to marshal all of the debtor's assets, including some that the debtor [herself] could not recover, in order to enhance the resources available to the pool of creditors." *Crestar Bank v. Neal*, 960 F.2d at 1245, (quoting *Vineyard v. McKenzie (In re Quality Holstein Leasing)*, 752 F.2d 1009, 1014 (5th Cir. 1985)).

Bragg had notice of the trustee's proposed sale of assets to Cobb, and did not object to said sale, or notify the trustee or the court that he claimed an interest other than his one-half interest, which was of record. Bragg's claim of a special equity and ownership interest in the marital home (in addition to his record ownership) was never made in the bankruptcy court, either by objection to the trustee's sale or by the filing of a proof of

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claim. The debtor's obligation to a former spouse is a "claim" for a "debt" as those terms are defined by § 101 of the Bankruptcy Code, making Bragg a "creditor" of this estate. 11 U.S.C. § 101(5), (10), and (12); *Bush v. Taylor*, 893 F.2d 962 (8th Cir. 1980).

In order to share in the distribution of the debtor's assets, a claimant must participate in the bankruptcy process, at least to the extent of filing a claim and speaking up when the trustee proposes a sale of property in which he, she, or it claims an interest. A claimant who has notice of a trustee's sale and fails to make a claim or file an objection is bound by the sale. See *Spartan Mills v. Bank of America Illinois*, 112 F.3d at 1257-58; *In re Allnutt*, 220 B.R. at 883. No exception is made for equitable claims by former spouses.

This Court finds that Bragg's silence during the bankruptcy case constitutes recognition that the trustee's interest in the debtor's property takes priority over Bragg's special equity and ownership interest and that the trustee has the right to sell that property as property of the estate. Had Bragg believed that the sale approved by this Court was for something other than the one-half interest in the marital home owned by the debtor at the time the bankruptcy case was filed, before marital litigation was commenced, Bragg could have made the trustee a party to the family court litigation, or sought a prior determine from this Court. See *Spartan Mills v. Bank of America Illinois*, 112 F.3d at 1256-57. No such effort was made in this case.

This Court finds that the Order entered by the Family Court is contrary to the Order of this Court authorizing the trustee's sale of property to Cobb and undermines the authority of this Court and the trustee to transfer clear title to property of a bankruptcy estate. Because this Court has the exclusive jurisdiction to authorize the sale of property and determine adverse interests in property of the estate, said Order constitutes an invalid collateral attack on this Court's Order of August 28, 1998, for the sale of property.

This Court further finds that the debtor owned a one-half interest in the marital home at the time she filed her petition and that interest was property of the estate; that Bragg's special equity and ownership interest did not attach to said property or was perfected post-petition; that pursuant to § 544, the trustee took the debtor's interest in the marital home free and clear of Bragg's special equity and ownership interest; and that Cobb purchased an undivided one-half interest in the marital home, not merely an equitable interest. The Order of the Family Court, insofar as it purports to determine that debtor's special equity and ownership interest in the marital home was 35%, that Cobb purchased only the debtor's equity in said home and orders Cobb to deed his interest in said property to Bragg, is null and void and of no effect. This Court also finds that the issuance of a deed by the trustee for said property is appropriate, and the trustee is hereby authorized to issue said deed. Finally, this Court permanently enjoins Bragg's


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enforcement of the Order of the Family Court, insofar as that Order determines that the debtor's special equity and ownership interest in the marital home was 35%, that Cobb purchased only the debtor's equity in said home, and orders Cobb to deed his interest in said property to Bragg.

While this Court acknowledges the effect of this Order on Bragg, the spouse least at fault in the marriage and with whom the equities lie in Family Court, and although this Court seeks to support and implement Family Court orders whenever possible, the issue here is one of jurisdiction which this Court must protect and federal law which this Court must apply.

Bragg may be able to equalize and recoup the "equities" by adjusting any disparity in costs and expenses he paid post-petition through any subsequent partition of this property in state court.

IT IS SO ORDERED.


Wm. Thurmond Bishop
Judge

Columbia, South Carolina

This 24th day of July, 2000.

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JUL 24 2000

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

CONNIE H. BROOKS

Deputy Clerk

Pl's atty. Fort
Def. atty. Cooper